

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

Appeal No. 105 of 2008

Dated: 18th January, 2010

**Present : Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson
Hon'ble Mr. H.L. Bajaj, Technical Member**

Shrishrimal Plantation Limited **Appellant (s)**

Versus

Chhattisgarh State Power Distribution Co. Ltd. & Anr. ... **Respondent (s)**

Counsel for the Appellant (s) : Mr. Thakur Anand Mohan Singh

Counsel for the Respondent (s) : Ms. Yogmaya Agnihotri for R.1

Mr. M. G. Ramachandran, Mr. Anand K. Ganesan
& Ms. Swapna Seshadri

ORDER

Shrishrimal Plantation Limited is the Appellant. It filed Review before the State Commission as against the main tariff order dated 15.6.2005 along with an Application to condone the delay of 3 years in filing the said Review. The said Petition for condonation of delay was dismissed. As against this, the Appeal has been filed.

2. There is no dispute in the fact that the main order was passed on 15.6.2005 and as against the said order no Appeal had been filed before the appropriate forum. On the other hand the Appellant approached the Consumer Grievance Rederssal forum on 13.10.2006 as against the said order and the same was dismissed on 28.12.2006 holding that the said Forum was having no jurisdiction.

Against this order the Appellant filed an appeal before the Ombudsman on 7.2.2007 and the same was dismissed on 26.4.2007 on the very same ground.

3. As against this order, the Appellant had filed an Appeal before this Tribunal on 26.6.2007 but when the matter was taken up for final disposal, the Tribunal found that there was no jurisdiction. Therefore, the learned counsel for the Appellant sought permission for withdrawal of the Appeal with the liberty to file appropriate petition before the State Commission and accordingly the said appeal was dismissed as withdrawn giving the said liberty. Instead of approaching the State Commission, as undertaken by the learned counsel for the Appellant before this Tribunal, the Appellant had chosen to file a writ petition before the Chhattisgarh High Court on 19.12.2007 and ultimately on 23.4.2008 the High Court had dismissed the said petition.

4. Even before the High Court, it was submitted by the learned counsel for the Appellant himself that he ought to have approached the Chhattisgarh State Electricity Regulatory Commission as per the undertaking given in this Tribunal and the Writ Petition was wrongly filed and, therefore, may be permitted to withdraw this petition with the liberty to approach the State

Commission. While dismissing the said petition, the same was incorporated in the order by the High Court. Thereafter on 14.5.2008 Appellant filed Review petition before the State Commission as against the main tariff order dated 15.6.2005. Since there was a delay of over 3 years, he had to file an application for condonation of delay.

5. The state Commission after hearing the learned counsel for the Appellant and also considering the available records dismissed the application on the ground that there is no satisfactory explanation for the long delay in filing the Review. Aggrieved by this order the Appellant has filed this Appeal before this Tribunal.

6. We have heard the learned counsel for the Appellant as well as the Respondents. The main point urged by the learned counsel for the Appellant that he approached several forums as against the Tariff Order dated 15.6.2005. He first approached the Grievance Rederssal Forum then approached the Ombudsman, after that approached the Tribunal and thereafter he approached Chhattisgarh High Court and lastly the State Commission.

7. It is true that while entertaining the application for condonation of delay, the Courts should take a liberal view in considering the explanation. The Supreme Court in a number of judgments would observe that even the long delay could be considered for condonation only when there is no lack of bonafide, no inaction or no negligence on the part of Applicant. In this case, it can not be said that there is no lack of bonafide.

8. As indicated above, the tariff order had been passed as early as on 15.6.2005. Appellant approached the Consumer Grievances forum only on 13.10.2006 and the same was dismissed on 28.12.2006. Against this order the Appellant filed an appeal before the Ombudsman only on 7.2.2007 and the same was dismissed on 26.4.2007. Only after two months the Appellant approached the Tribunal on 26.6.2007. At the time of hearing he requested the permission to withdraw the Appeal. He was allowed to do so with the liberty to approach the State Commission. In stead of approaching the State Commission the Appellant approached Chhattisgarh High Court that too after 6 months of withdrawal of Appeal from the Tribunal.

9. Again the said Writ petition was withdrawn from the High Court with the liberty to approach the State Commission. Thus, he approached all the

forums even though they are not competent forums. The only explanation given by the present counsel for the Appellant that the Appellant had all along been wrongly advised by all the lawyers at Raipur. This explanation is preposterous. If the Appellant felt that it was wrongly advised by the lawyers, he should have approached the Bar Council for legal action to be taken against the said counsel. Admittedly, this was not done. Hence, we are unable to accept the explanation which lacks bonafide.

9. Hence, we are of the view that the order rejecting the condonation of delay petition in filing a Review by the State Commission is well justified and there need be no interference. In the result the Appeal is dismissed. No costs.

(H.L. Bajaj)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated : 18th January, 2010.